

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN,)
Plaintiff,) CIVIL NO. CV03-476 KSC
vs.)
WILLIAM P. BADUA; JEFFREY OMAI;)
SPENCER ANDERSON; NEIL PANG; and)
DOES 5-10,)
Defendants.)

DEPOSITION OF BYRON ELIASOFF, M.D.

Taken on behalf of the Defendants at 615 Piikoi Street, Suite 1509, Honolulu, Hawaii, commencing at 2:35 p.m. on February 23, 2006, pursuant to the Federal Rules of Civil Procedure.

BEFORE: SHEILA BRITT LIPTON, CSR NO. 257
Notary Public, State of Hawaii

HOUSING INFLATION REPORTING GROUP SURVEY RESULTS

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Honolulu, Hawaii 96813

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1 Q. I'm sorry if that's what I said. I thought I
2 said the only thing that you did. I did not mean to
3 diminish your opinions.

4 You looked -- You examined Ms. Coloyan, and you
5 looked at documents that were given to you to look at for
6 purposes of doing your opinion?

7 A. Yes, that's correct.

8 Q. And the documents that you looked at are those
9 documents identified on page 10?

10 A. Yes.

11 Q. I noticed included in the list of documents were
12 a series of legal pleadings, like the complaints?

13 A. Yes.

14 Q. And actually the depositions of the police
15 officers?

16 A. Yes.

17 Q. Now, do you have any idea what the purpose of
18 giving you depositions of police officers would be for
19 purposes of you doing a medical examination of this case?

20 A. Well, the accuracy of Ms. Coloyan's account as to
21 what actually occurred to upset her is an important issue
22 here.

23 Q. Are you looking at the police officers'
24 accounting as a truthful accounting?

25 A. I'm looking for consistency and how they match up

1 with her account.

2 Q. So did you draw some significance that they're at
3 odds with her account?

4 A. I drew some significance from the fact, more
5 significance from the fact that they were consistent. And
6 the fact that there was a remark that one of them made we
7 would have had a SWAT team if they were going to enter
8 without permission because of their safety as being
9 significant. So I placed a fair amount of credence on
10 those reports based on that fact as well as the
11 consistency.

12 Q. So you relied upon the police officers in part in
13 making your prognosis in this case?

14 A. Not my prognosis. I relied in part on the police
15 officers' account in terms of forming an opinion as to how
16 likely her accuracy would be about her description of what
17 occurred.

18 Q. And based on that you formed an opinion from what
19 the police officers are saying in their depos as to that
20 accuracy?

21 A. I think you're over-simplifying it.

22 Q. Help me.

23 A. There were a number of developments that went
24 into my forming an opinion about her accuracy or possible
25 inaccuracy I should say. There were her own

1 inconsistencies. And there was, on the other hand, in
2 addition to that, the consistency of the officers and the
3 statement that they would not risk putting themselves at
4 risk by entering without a SWAT team behind them.

5 Q. I notice you went through every police officer
6 except Neil Pang. Is there a reason you left Neil Pang
7 out?

8 A. There was nothing in there that was relevant.

9 Q. In Neil Pang?

10 A. That I could find, in my opinion.

11 Q. And the highlighted words that you do in the
12 police reports are your drawing significance to that?

13 A. Yes.

14 Q. Let's take the one officer, Badua. And I'm
15 talking now in terms of medical significance. You see
16 that Officer Badua, you've highlighted words, looks like,
17 to the effect --

18 A. What page are you?

19 Q. I'm sorry. Page 13.

20 A. Go on.

21 Q. I noticed that you are focusing on, looks like
22 the words about being invited in. I don't mean to
23 overstate it. But Looks like that's the purpose of
24 drawing emphasis to that in Badua knocks on the door and
25 she invited him in, words to that effect.

1 A. That's his account.

2 Q. You are putting that into emphasis because you
3 want to make it clear that his opinion that he was invited
4 in?

5 A. Yes.

6 Q. You understand Ms. Coloyan says that that didn't
7 happen?

8 A. Yes.

9 Q. You certainly picked that up from your interview
10 of her?

11 A. Well, it's throughout my history of present
12 illness. And it's also referred to and also highlighted
13 as this is highlighted in her deposition.

14 Q. Now, you've also made it clear that you don't
15 believe Ms. Coloyan is intentionally misrepresenting
16 facts?

17 A. That's correct.

18 Q. Are you suggesting then that she did do what Mr.
19 Badua is saying she did but just forgot about it because
20 of the exigency of the situation?

21 A. I wasn't there so I don't know. But I think
22 there's a very significant possibility that that occurred
23 based on the other mistakes she made about what occurred,
24 like the number of police officers that were in her house,
25 whether they just came in or invited themselves in, and

1 some of the other inconsistencies that I referred to.

2 Q. Are there any other inconsistencies that you
3 haven't referred to that were on your mind to help you
4 want to highlight these words?

5 A. Not that I can think of.

6 Q. Now, you were given the entire depositions of all
7 these officers, right?

8 A. Yes.

9 Q. And yet you selected just these portions. And, I
10 take it, you selected these portions for a reason?

11 A. Yes.

12 Q. And what was that reason?

13 A. I thought they were relevant to the questions
14 being asked.

15 Q. Meaning?

16 A. Meaning were they invited in or did they go in
17 uninvited. And I was looking, as I said, to see if there
18 was consistency in their account.

19 Q. Have you done cases involving police officers
20 before where there's a number of police officers
21 testifying about a particular incident?

22 A. Yes.

23 Q. And have you found -- Have you ever heard of a
24 term called the code of silence?

25 A. Yes.

1 Q. What do you understand --

2 MS. KAWAI: Objection. Relevance. Just for the
3 record.

4 BY MR. SCHWEIGERT:

5 Q. What do you understand the code of silence to be?

6 MS. KAWAI: Same objection. Sorry.

7 THE WITNESS: The code of silence occurs in all
8 kinds of settings. When there are groups of people
9 working together in which people agree not to acknowledge
10 that something has occurred, or to portray as having
11 occurred that didn't. They agree to the same account.
12 That happens on the waterfront. It happens in the
13 military. It happens with police officers. This kind of
14 phenomena occurs in a variety of settings.

15 BY MR. SCHWEIGERT:

16 Q. For purposes of evaluating these police officers'
17 testimony, did you interview any of these police officers?

18 A. No.

19 Q. Did you do any other reports about this
20 particular incident but for those documents you've
21 identified in your report?

22 A. No.

23 Q. I also picked up that you looked at this lady as
24 a hard working lady. Is that a fair statement to make?

25 A. I would say she's a very hard working lady.

1 STATE OF HAWAII)
2 CITY AND COUNTY OF HONOLULU) SS.
3

4 I, SHEILA BRITT LIPTON, CSR NO. 257, Notary Public
5 in and for the State of Hawaii, do hereby certify:

6 That on February 23, 2006, 2:35 p.m. appeared
7 before me BYRON ELIASOF, M.D., the witness whose
8 deposition is contained herein; that prior to being
9 examined, the deponent was by me duly sworn; that the
10 deposition was taken in machine shorthand by me and was
11 thereafter reduced to typewriting under my supervision;
12 that the foregoing represents, to the best of my ability,
13 a correct transcript of the deposition had at that time;

14 That the deponent was notified through counsel, by
15 mail or by telephone to appear and sign; that if the
16 deposition is filed without signature, either the reading
17 and signing of the deposition were waived by stipulation
18 of all parties or the deponent has failed to appear, and
19 the deposition is therefore filed pursuant to Rule 30(e),
Hawaii Rules of Civil Procedure.

20

21

Date: 2-23-06

22

23

Sheila Britt Lipton
SHEILA BRITT LIPTON, CSR NO. 257
Notary Public, State of Hawaii
My Commission Expires: 5-9-2009

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